IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.42 OF 2005

Shri.Swarrochand Jain ..Petitioner
Vs.
State of Maharashtra & Anr. ..Respondents

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Mr. S.G.Bhandary i/b Ms.Bhandary and
Bhandry for Petitioner
Mr.S.P.Bharati for Respondent no.1
Mr.V.B.Konde-Deshmukh, A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : JUNE 22,2005

P.C.

1. Heard the learned advocate for the petitioner-original accused and the learned advocate for the respondent no.1-original complainant.

2. The petitioner is seeking quashing of proceedings relating to C.C.No.3061/S/2003. In the said case the process was issued by the learned Addl.Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai under Section 138 of Negotiable Instruments Act.

3. Only one contention has been raised by the

learned advocate for the petitioner i.e. at the time when the offence was committed the petitioner was not director of the company. Reliance has been placed on form no.32 which is at Annexure-B to the petitioner to show that the petitioner was not the director of the company at the relevant time. In the case of **Raj Lakshmi Mills V.Shakti Bhakoo reported in (2002) 8 SCC 236,** the High Court had quashed the proceedings on the assumption that "X" was not in charge of or responsible for the conduct of business of the firm. The Supreme Court has observed that "We are of the opinion that at the stage of summoning when evidence was yet to be led by the parties, the High Court could not on an assumption of facts come to a finding of fact that the accused was not responsible for the conduct of the business. On this ground alone, these appeals are allowed and the impugned decision of the High Court is set aside".

4. In the present case it is an admitted fact that the cheque which has been dishonoured was issued in relation to the transaction which admittedly took place when the petitioner was director of the

company. It is not disputed by the petitioners that the petitioner was not incharge of the day to day affairs of the company at that time. Moreover, the learned advcoate for Respondent no.1 disputes that the petitioner was not responsible for the conduct of the busines when the offence was committed.

5. Moreover, in the case of State of **M.P. Vs. Awadh Kishore Gupta & Ors. reported in (2004) 1 SCC 691,** the Supreme Court has observed that in the matters under Section 482 Cr.P.C., annexures to the petition under Section 482 cannot be termed as evidence without being tested and proved and hence, these annexures should not be acted upon by the High Court. So also, in the case of **Chand Dhawan V. Jawaharlal and Ors. reported in (1992) 3 SCC 317**, it has been held by the Supreme Court that the Court should not act on the annexures to the petition where the documents are not admitted or accepted by the complainant. In view of the facts of this case and the observations of the Supreme Court in the various decisions cited above, I am of the opinion that no reliance can be placed on the

documents annexed at this stage.

6. Reliance was placed by the learned advocate for the petitioner on a decision of this Court in the case of **Saumil Dilip Mehta Vs.State of Maharashtra and others [AIR 2002 Bombay 194]**. It may be stated here that this decision is not in respect of quashing of process or proceedings under Section 138. Moreover, in this case the learned advocate for the respondent does not admit the genuineness of the documents i.e. Form 32. Thus, in view of the decisions of the Supreme Court quoted above, in my view, at this stage, when the evidence has yet to be led, it would not be proper to rely upon the annexures which have been annexed to the present petition. Thus, in view of the observations in the various decisions cited above, I am of the opinion that no reliance can be placed on the documents which have been annexed to the petition. In this view of the matter, I find no merit in the petition and the same is dismissed.

[SMT.V.K.TAHILRAMANI,J.]